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Fair Franchise League.

REPORT

of the

Executive Committee

Presented 12th December, 1918

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FAIR FRANCHISE LEAGUE

FAIR FRANCHISE LEAGUE

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PRESIDENT

ALEX. FALCONER, K.C.

VICE-PRESIDENT

*P. B. MIGNAULT, K.C.

TREASURER

MAXWELL GOLDSTEIN, K.C.

SECRETARY

J. C. WALSH

ASSISTANT SECRETARY

WALTER S. JOHNSON

EXECUTIVE COMMITTEE

The foregoing, and
L. E. Gauthier
W. I. Gear
Geo. Lyman
T. L. Morrissey

A. McA. Murphy
Joseph Quintal
J. H. Sherrard
Lt.-Col. H. J. Trihey, K. C.
T. H. Wardleworth

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J. C. Walsh
Maxwell Goldstein, K. C.
J. R. Dougall
T. L. Morrissey
James Morgan
A. K. Fisk
A. McA. Murphy
R. R. Macaulay
John Ogilvy
M. B. Steine
D. S. Friedman
Jos. Quintal
E. E. Howard, K. C.
Henry Holgate
C. H. Gould
J. G. Borthwick
*P. B. Mignault, K. C.
J. N. McKim
E. F. Surveyer, K. C.

George Lyman
T. H. Wardleworth
Lt.-Col. H. J. Trihey, K. C.
John W. Loud
J. Cradock Simpson
F. E. Dougall
C. J. Flint, K. C.
J. S. Brierley
V. E. Mitchell, K. C.
R. A. Ross
J. W. Blair, K. C.
Geo. E. Williams
W. S. Leslie
Sir Wm. Peterson, K.C.M.G., etc.
E. Q. O'Connor
W. I. Gear
Arthur H. Campbell
L. J. Tarte
W. Graham Browne
A. M. Irvine

Rev. H. Symonds, D.D.

*Mr. Mignault having been appointed to the Bench of the Supreme Court of Canada before this report was drafted ceased to act as a member of the Executive.

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FAIR FRANCHISE LEAGUE

FINAL REPORT OF THE EXECUTIVE COMMITTEE.

Montreal, November, 1918.

To the members of the Fair Franchise League.

The Executive Committee has the honor to report as follows:—

You will recall that on the 26th February, 1916, a memorial was presented to the Honorable Prime Minister in person at Quebec. It set forth the serious charges that had been publicly made against the Montreal Tramways Company and left without answer, expressed its belief that certain of them had been proved and that all should be inquired into. It asked that the Government use its authority to have all the facts made public, to protect the City's autonomy and recognize its paramount authority and to do everything possible to have the problems of the proposed new franchise settled in consonance with the best modern theory and practice and the maintenance of the public's right to govern itself.

Your committee's action was reported at a general meeting of the League, and a resolution endorsing it sent to the Prime Minister on the 6th May, 1916. Receipt was not even acknowledged, nor was any action whatever taken with regard to the memorial. Its requests, endorsed by all the members of the general committee whose signatures could be obtained, forty out of forty-four, were ignored.

Negotiations went on between the City and the Company in a desultory way when suddenly without warning or notice towards the end of the session of 1916, at the instance of the Government there was added to the Montreal City bill an amendment providing for the appointment by the Government of a Tramways Commission, ordering this commission as representing the City to prepare a contract with the Montreal Tramways Company, and enacting that such contract when accepted by the Company should constitute a grant of a franchise for thirty-six years to the Company, renewable by five year periods until the Company should be bought out by paying the value of its property, plus ten per cent.

The City's elected representatives were thus deprived of all control over this great question, and the Commission's hands were tied by legislation wholly in the Company's interest as respects two vital features. This was done without opportunity to any of the public bodies or to citizens to be heard on the proposal.

Your Committee looks upon this action of the Legislature as a violation of the City's autonomy and wholly unjustifiable. It assumed, without

investigation or inquiry, and notwithstanding the facts brought by your executive to the Government's attention, that the failure to settle the question had been due to the City, and that the Company was blameless, whereas the reverse was plainly the truth.

Your Committee nevertheless felt that criticism of the action of the Legislature, of the constitution of the Commission, and even of the Commission's procedure, should be avoided; that its attitude should throughout be one of assistance, not of criticism, and this course it consistently followed, relying on promises of opportunity for criticism and suggestion, when the draft contract should be completed.

After some delay the Commission started work by announcing that hearings would be given to all public bodies or citizens who had representations to make. Among those who appeared were members of the Board of Commissioners and of the City Council, representatives of various public bodies, and groups of citizens; some of these purported to speak in the general public interest, others merely set forth the requirements of particular districts or interests. Your Committee addressed a memorial to the Commission, which after shortly reviewing the situation asked particularly for three things:—

1st. Public sittings in so far as necessary to enable the public to follow what was being done, and from time to time to make special representations on the numerous different questions arising as they came up for action.

2nd. That the return to the Company should be primarily based on the moneys invested in the road, i.e., on the value of its physical assets.

3rd. That the Commission should avail itself throughout its work of the best expert assistance obtainable.

We also asked for an opportunity to make, before the work of the Commission should actually begin, preliminary observations as to the general lines that should be followed.

This last request was granted, and at considerable expense we retained as our spokesman, Dr. Delos F. Wilcox of New York, who is generally recognized as the leading franchise expert on the continent. A courteous hearing was given and Dr. Wilcox was followed with great attention and questioned on a number of points by members of the commission.

We were also given to understand by the Commission that full opportunity would be given to the public to consider and make representations with regard to the work of the Commission before it became effective as a contract.

We regret to say that the Commission made no reply whatever to our communication other than to grant the preliminary hearing. Our request for publicity was simply ignored. After all who appeared had been heard the Commission sat with closed doors. No information whatever was given out, and no opportunity permitted to make representations on the many and important questions that came up for consideration. It was announced

through the press that the Commission had visited several large cities to examine the working of the systems there and to study the different agreements in force. We learned that Mr. Herdt of Montreal, the Commission's advisory expert, had made a report condensing all the information that has been obtained and asked for a copy, but this request was refused.

Your Committee at a later stage asked Dr. Wilcox to prepare a memorandum indicating the questions and points that should be considered and their comparative importance; also giving suggestions as to how they should be dealt with, the idea being that he should prepare an exhaustive outline which would prevent the Commission's overlooking any point of importance, and would warn them of the dangers in their way.

This Dr. Wilcox did and his report was transmitted to the Commission; its receipt was acknowledged with thanks, and we were told informally that use was made of it. But the League was given no opportunity for further suggestion and no attention whatever was paid to its request for further hearings for its expert as the work progressed.

During all this time, extending over months, the Commission continued its secret sessions, and finally, when the Legislature was sitting in January last, and while the Montreal bill was before the Private Bills Committee for discussion, the Commission completed the agreement, which was signed by it on behalf of the City and by the Tramways Company and hurried to Quebec, laid before the Public Bills Committee of the Legislature and ratified without discussion.

The agreement was therefore completed and made law without any opportunity to the citizens of Montreal whom it binds for thirty-six years, and ever after unless the City expropriates, to give any consideration whatever or make any representations with regard to the important problems involved therein; Montreal and its citizens were ignored throughout, and this on a contract calling for contributions by the citizens of over nine millions annually and which will increase constantly as the City grows.

Apart altogether from the question whether the work of the Commission be well or ill done your Committee believes that procedure such as this was wholly unjustifiable, a most serious and unwarranted interference with the rights of the City of Montreal and the other communities affected, and a most autocratic and high-handed proceeding by both the Commission and the Legislature.

The contract was presented to the Private Bills Committee as an amendment to the City bill, accepted and ratified at once, and became law before copies of it were available for study and therefore became a closed matter before any criticism could be offered or judgment passed upon it.

Your Committee has referred at length to the manner in which the contract was forced on the City because it feels that this assault on municipal self-government and the rights of the public is a matter of even deeper concern than the terms of the contract itself. It was an open denial of the basic principle for which your League stands, the right of the public to

decide, either directly or indirectly through their chosen representatives, all matters which affect only themselves.

With regard to the contract itself we have to report that the agreement on its face bears evidence of an honest if hurried and autocratic attempt to devise, subject to the limitations prescribed by the statute, a franchise agreement on modern lines, and shows much study and work by the members of the Commission.

As regards the details, your Committee felt that the criticism of an expert would be more authoritative than any that it could offer; it therefore submitted the contract to Dr. Wilcox and his report is before you.

From its own consideration of the contract and from Dr. Wilcox's report your Committee has come to the following conclusions.

First and foremost the contract recognizes that within the limits laid down by the Legislature (and Dr. Wilcox shows how serious these limits are) the basic franchise principle for which the League has always worked, viz., that a utility company operating on the public streets is a public servant performing a public service, and should be treated as such; that therefore the City, or other body representing the interested public, should always have the right to require such service as it is ready to pay for; further that as in other public services all idea of speculation should as far as possible be eliminated and the Company assured a fair and reasonable return on its investment, and be fully protected from loss due to changing conditions or to any cause other than its own mismanagement.

The contract provides that the return to the Company shall be based on the value of its physical assets, and that the bulk of profits, in excess of the fixed return, shall be applied for the benefit of the City, either by cash payments or a reduction in fares. It also provides for some, if inadequate, measure of publicity and control.

For this basic principle your League has fought from the beginning. It is a principle supported by all the best authority but one which public utility companies never accept till forced to do so after a hard fight. Its acceptance does more than anything else to take the question out of politics and to remove the incentive for municipal and legislative corruption which has made the history of public utilities in many of the great cities of the continent a story of shame and disgrace. It lays a foundation upon which future improvements may be based.

Your Committee believes that the thanks of the public are due to the Commission for having laid this foundation and that this result alone fully justifies the League's action and compensates it for all its work.

Your Committee, however, regrets that it cannot regard with equal satisfaction the structure that has been built upon the foundation, and for this the blame is to be laid partly at the door of the Government and Legislature, and partly at the door of the Commission.

In the first place the valuation of the physical assets appears to your

executive very excessive, bearing in mind that it is only about \$2,000,000 short of the nominal figure of the Company's securities which about five years ago were suddenly inflated without any reason being given by \$11,000,000. Further reasons for this conclusion appear from Dr. Wilcox's report and while it is impossible to say what the valuation should be, it is evident that it was made with undue haste and with insufficient expert assistance.

Dr. Wilcox had pointed out the extreme difficulty of the valuator's task, the necessity for laying down principles upon which the work should be done and the employment of special experts; he had insisted that a general direction to make a valuation was useless. Yet that is apparently what was done, and so far as your Committee has been able to learn the valuations were given no instructions as to the principles that should guide them in their work, for instance, those that should govern the valuation of rights of way.

Your Committee cannot help feeling that if the members of the Commission had been directors and large shareholders representing a private company in a commercial transaction of much less importance very different methods would have been employed, and they would not have been satisfied unless they had the most ample and efficient expert assistance obtainable on every point. Much more had the public a right to expect that in a matter fraught with such tremendous consequences to the future welfare of the citizens there should be no suspicion of haste or of failure to make use of every means available to ensure absolute accuracy.

Your Committee has dealt with this point at length because an excessive valuation means excessive fares or a scamped service; in one way or other a plundering of the public during the life of the contract. It may make a hopeless failure of a contract otherwise good and thereby throw discredit on what is good in it.

It is to be noted, however, that in Dr. Wilcox's opinion the securities against any further inflation of capital in connection with rehabilitation renewals and extensions are exceptionally effective.

The second point of importance is the rate of return. This is about $6\frac{1}{2}\%$ on the money invested as found by the valuation and working capital, with an extra 1% under war conditions. As a great part of the money, over three-quarters, bears only a little over 5% this means for years to come a very high rate, up to nine or ten per cent on the shareholders' investment, an altogether excessive rate when it is borne in mind that all risk has been eliminated. We call attention to Dr. Wilcox's report on this point. That this high rate was purposely allowed because the contract provides no means of enforcing the City's rights appears later.

The third important point is that of control by the City or other representative of the public; especially the means provided by which the City may be assured of at all times getting the service it wants upon paying the agreed price.

Theoretically this control is vested in the new Tramways Commission which is not elected by the City or the municipalities affected either directly

or indirectly, but is appointed by the Government. Your Committee is not satisfied that this leaves to the public interested the control to which it is entitled, and thinks that much greater voice should have been given to the municipalities affected in the selection of the members of the Commission, especially as there is an appeal to the Quebec Public Utilities Commission. As matters stand the Tramways Company is the servant and therefore should be required to give such service as the municipalities demand, subject to being protected against unfair demands. But those entrusted to look after the municipalities' interests are a body not appointed by nor accountable to them. However the problem is a difficult one and your Committee abstains from further criticism.

Nominally the Commission may order such extensions and improvements as it thinks necessary subject to not interfering with the Company's rights, but there are no means of any kind provided for enforcing its orders. The penalty of \$40.00 per day is manifestly inadequate and is admittedly not meant as a means of enforcing compliance with orders for improvements or extensions.

It is manifest that the only effective means of compelling compliance with such orders is power to take back the franchise and Dr. Wilcox so reports, (in which case the Company should be adequately compensated for its property), or, in the alternative, power to enter and operate temporarily at the Company's cost. No such provision is in the contract. Therefore if the shareholders do not care to part with their own money and cannot borrow on terms which will give them a profit merely for raising the money, it is impossible to compel them to act, nor is it possible to take over the road and operate it or make terms with a new franchise holder.

This is due to the Government at whose instance the law was enacted declaring that the contract must be for thirty-six years, and which further provided that at the end of that time it must continue unless the City take the road over at a valuation plus ten per cent.

Both these requirements are solely in the Company's interest, and their effect is to make it impossible for the City to force improvements or extensions no matter what orders it obtains from the Commission or the Public Utilities Commission. If it pays the Company to comply well and good, if not, it will sit back and nothing can be done except appeal to the Legislature for a new law.

For this fatal defect in the contract the Commission is not responsible: it must, however, if at all competent have been impressed by it, and as representative and champion of the City, morally, if not legally, accountable to its citizens it could easily have called public attention to the situation and insisted on its being remedied. The Commission found its task impeded by a defect in the law in that it gave jurisdiction only as regards the City, omitting Westmount and Outremont, and it had this remedied by the Legislature. For its failure to bring the other and more important defect to the attention of the Legislature and to ask for its removal no reason has been given to the public. The Commission has not yet thought it its duty to make any report of its work or to give an explanation of its action, or of how or why it reached its conclusions, to the 700,000 citizens whom it has bound

for thirty-six years by a contract it did not permit them or their elected representatives to examine before it was put in force.

That the Commission did recognize this fatal defect appears from the attempt made to remedy the situation in another way. Not being able to force the Company to live up to its obligations it devised a scheme to make it in its interest to do so. The principle adopted is very simple, viz., to make the possible return on moneys invested so great and so free from risk that the Company would need to be restrained from extending too rapidly. This is found in that part of the financial provisions which guarantees a fixed rate of about $6\frac{1}{2}\%$ on all the money invested with power to raise over three-quarters of the money required by an issue of bonds at any rate at which money can be obtained. So long as money can be borrowed at a comparatively low rate, as was the case before the war, this will probably be successful but only because the Company is being paid a high return. If the rate rises the Company will not act and the City will be helpless. Dr. Wilcox agrees with these conclusions but his opinion is that the inducements to provide additions and extensions are liberal enough to prove sufficient.

Other financial provisions have for object the providing of inducements to the Company to operate economically. As to them your Committee has nothing to add to the comment of Dr. Wilcox, who is of opinion that their success or failure will depend on the intelligence and firmness of the new Tramways Commission. We may say here that as regards this part of the contract, section 92, and only as to this, was Dr. Wilcox consulted. The general scheme was his but he never saw it in its completed form, nor was any other portion of the contract submitted to him.

There is also to be noted the meagreness of the provisions in the interests of employees and the absence of any provision for harmonizing conflicting interests of employers, employees and the public.

Criticism might be offered on this and other features but your Committee thinks it best to limit what it has to say to points of major importance which create vested rights with which it would be difficult to interfere.

Objection may be made that as the contract has been signed and made law by the Legislature, it is now too late to alter it by criticism. This is true, but none the less your Committee thinks that the League should pronounce itself with no uncertain voice.

In the first place, if this contract prove a failure (and the widespread dissatisfaction due to the greatly increased fares show that it is so looked upon by very many), it is in the highest degree important that the causes of the failure should be understood. There are other public utilities which may yet have to be dealt with, and they may not be slow to blame the failure on what is good in the contract. It is therefore important that the real defects should be exposed.

In the second place it is not at all impossible that further legislation may be found necessary. Opportunity not now foreseen may arise for securing improvements; it is well therefore that the whole situation should be made clear.

Thirdly: These things could never have happened if the public had understood and been keen to protect its rights. It is well that it should understand what its failure to learn and to act has cost it.

Your Committee feels that in closing it should add a few words to what it has already said as to its reasons for dealing with the action of the Government and of the Commission at so much greater length than with the contract itself. Its reasons are two.

First, criticism of the details of the contract is primarily the business of an expert: they have therefore left that to Dr. Wilcox who can speak with authority.

Secondly, in addition to the question of the merits and demerits of the contract another and much more important question is involved, the question of the right of the citizens of a municipality to govern their own affairs, to control their own streets, to make their own contracts.

Your League was formed to deal with both questions, to support the right of a municipality to determine its own franchise arrangements and to help it to make them wisely. It has failed in the first object, it has had a large measure of success in the latter. It is well that its members should understand what has happened.

For the results with regard to the contract itself there can be no better guide than Dr. Wilcox's report. On the larger and broader question it is for your Executive to summarize the results.

The Government was given every opportunity to espouse the City's cause. It chose to take sides with the Utility Company.

When the City's representatives, elected by large majorities in a reform movement, had barely commenced negotiations with the Utility Company, the latter, against the protest of the civic authorities and of most of the public bodies, was given by the Legislature unusual powers of the broadest kind on its promise to use them in the public interest. They were used solely in its private interest. Great civic scandals arose. Charges of the most serious nature were openly made against the Company and the abuse made of the powers granted was brought to the Government's attention. The Government shut its eyes and ears and answered the representations made to it by taking away from the City the right to make its own franchise arrangements and entrusting this power to a commission of its own appointing by an act which required that any contract made should, on two of the most important points involved, meet the Company's demands. It helped to keep the public and its representatives in complete ignorance of the contract prepared by the Commission till too late.

The Commission was afforded a unique opportunity to give to the people a competent leadership in obtaining its rights and to engage their support in the effort. It chose instead to take upon itself by star chamber methods to bind them for thirty-six years or more to a compromise in which they had no say.

The Commissioners, though appointed by the Government, were in fact representatives of the citizens, not arbiters between the City and the Company. On them rested no obligation to come to any agreement with the Company. They recognized that this was their status. As such representatives it was their duty to give the citizens every opportunity to make known their wants and wishes; if not from time to time as the work progressed and each separate question came to be dealt with, at least at the end while the contract was in draft form and before the citizens were irrevocably bound. If the Company would not accept reasonable terms they were at liberty to refuse to meet its unreasonable demands and to report their action. They did none of these things. At no stage, except at the opening, did they consult the citizens either individually through their associations or through their elected representatives. Throughout they treated them as children whose duty it is to accept gratefully and without question what is done for them. They have not deigned to explain to the public in any form whatever the reasons for their actions, nor the grounds for their conclusions. They even went out of their way to have the contract made law before copies of it could be had by any one interested to see what had been done.

If citizens of a great city are prepared without protest or remonstrance to accept such action on the part of five men, of however high standing in private life, in whose selection they had no voice, then farewell to all principles of self-government. Your Executive knows of no great city on this continent that has ever been subjected to such humiliation.

Finally, as to the future of the League:—

The contract is in force and cannot be changed except by legislation. Your Executive does not advise that any action should be taken by the League in that direction at present. It suggests, however, that the League be not disbanded and that it be left to the Executive to call the members together if an opportunity not now foreseen should in the near future arise offering an opportunity for effective action.

The Treasurer's statement, kindly audited by Messrs. Sharp, Milne & Co., Chartered Accountants, is herewith submitted. Further funds will be required to meet the remaining obligations and we suggest that each member who has not recently done so send a subscription to the Treasurer. Should there be any surplus your Executive suggests that the president be empowered to pay over the same to the Red Cross or any other patriotic or charitable association he may select.

The whole respectfully submitted.

A. Falconer,

President.

Walter S. Johnson,

Secretary.

MONTREAL, 22nd November, 1918

FAIR FRANCHISE LEAGUE

in account with

MAXWELL GOLDSTEIN, K.C.

Treasurer

RECEIPTS

Contributions and Donations	\$2434.00
Bank Interest	13.22
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	\$2447.22

DISBURSEMENTS

Dr. Wilcox on account of fees & travelling expenses	976.00	
Printing pamphlets, list of members, etc., Type-writing and Stationery	854.90	
James A. Whitaker, clerical services	90.00	
A. F. Riddell, Accountant, fee re Memorial	50.00	
Expenses re enquiries at Quebec re Montreal Bill	16.00	
Notarial Extract of Contract	13.25	
Postages, Telegrams, Rent of meeting rooms, etc.	102.87	
Mr. Falconer, expenses trip to New York for interviews with Dr. Wilcox	60.00	2163.02
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Balance in Bank and on hand		\$ 284.20

Audited and Verified

SHARP, MILNE & COY.
Honorary Auditors.
Chartered Accountants.

MONTREAL, Nov. 30th, 1918.

LIABILITIES

Balance Dr. Wilcox's fee	\$ 200.00
Cost of printing and postage of Dr. Wilcox's Report and Executive Committee Report (estimated)	200.00
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Less amount in Bank as above	400.00
	284.20
	<hr/>
Deficiency (estimated)	\$ 115.80

LIST OF PUBLICATIONS ISSUED BY THE LEAGUE AND THE COMMITTEE WHICH PRECEDED ITS FORMATION.

The objects of the Fair Franchise League.

The People and Their Street Cars.

The Streets Belong to the City.

A study of the proposals made by Mr. Controller Hebert.

A Fair Franchise—Suggestions as to the method of arriving at a New Franchise Agreement.

Memorial presented to the Honorable the Prime Minister of Quebec by forty citizens of Montreal, with documents in support thereof, 26th February, 1916.

"The Ideal Tramways Franchise and How to obtain it," address delivered before the Westmount Canadian Club on Friday, the 8th December 1916 by Mr. A. Falconer, K.C., President of the League.

Report by Dr. Delos F. Wilcox on the New Montreal Tramways contract.

Final report of the Executive Committee.